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Applications for declarations of  
significant discovery and commercial  
discovery







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# **NATIONAL ENERGY BOARD**

## **GUIDANCE NOTES FOR APPLICANTS**

### **APPLICATIONS FOR DECLARATIONS OF SIGNIFICANT DISCOVERY AND COMMERCIAL DISCOVERY**

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## **NATIONAL ENERGY BOARD -- GUIDANCE NOTES FOR APPLICANTS**

### **APPLICATIONS FOR DECLARATIONS OF SIGNIFICANT DISCOVERY AND COMMERCIAL DISCOVERY**

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#### Contents

1. Legislation
  2. Nature of Significant and Commercial Discovery Declarations
  3. Legislated Authority and Procedures
  4. Details of the National Energy Board Procedures for Significant and Commercial Discovery Declarations
  5. Contents of an Application for Significant Discovery Declaration
  6. Contents of an Application for Commercial Discovery Declaration
  7. Filing of Applications
- 

#### **1. Legislation**

*National Energy Board Act (NEBA) Part II.1, Section 28.2.*

*Canada Petroleum Resources Act (CPRA) Part III Section 28 (Significant Discoveries) and Part IV Section 35 (Commercial Discoveries).*

*New legislated responsibility...*

In the spring of 1994, amendments were made to the *Canada Petroleum Resources Act (CPRA)* and the *National Energy Board Act (NEBA)* authorizing the National Energy Board ("NEB" or "the Board") to make, amend and revoke declarations of Significant and Commercial Discovery on frontier lands under the Board's regulatory jurisdiction and outlining procedures by which the Board would exercise this responsibility.

#### **2. Nature of Significant and Commercial Discovery Declarations**

Following the discovery of oil or gas in the North or in offshore areas not subject to a federal/provincial shared management agreement (Accords), the NEB is responsible for making a declaration of Significant Discovery, that is, for stating that a discovery has been made and

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describing the lands to which there are reasonable grounds to believe that the accumulation of oil or gas may extend. Application to the NEB to declare a Significant Discovery is made by the holder of the interest or a share of the interest prior to expiry of the interest. The NEB may also declare a Significant Discovery on its own initiative, or may amend declarations or revoke previous declarations based on the results of further drilling.

Once the declaration of Significant Discovery has been made by the NEB, the interest owner may apply to the Minister of Indian and Northern Affairs Canada (INAC) for northern onshore and offshore areas or to the Minister of Natural Resources Canada (NRCan), for offshore areas not under the jurisdiction of INAC and not subject to Accord Agreements, for a Significant Discovery Licence which will continue the interest over the lands described in the declaration.

If an interest holder plans to develop a discovery for production, the holder of the interest or share may apply to the NEB for a declaration of Commercial Discovery, defined as a discovery of petroleum that has been demonstrated to contain petroleum reserves that justifies the investment of capital and effort to bring the discovery to production. The NEB may also declare a Commercial Discovery on its own initiative, or may amend declarations or revoke previous declarations based on additional drilling.

A declaration of Commercial Discovery enables the interest holder to apply to the responsible Minister for a Production Licence which conveys title to the produced oil and gas. The interest holder will not be granted a Production Authorization however, until the Board approves a Development Plan application submitted under subsection 5(1) of the *Canada Oil and Gas Operations Act (COGOA)*.

Most activity on the part of the Board leading to the declaration of a Significant or Commercial Discovery centres on determining the existence and extent of the discovery.

### **3. Legislated Authority and Procedures**

On receipt of an application from a holder of an interest or share, or, on its own initiative, the NEB...

*"...shall...make a written declaration of significant discovery in relation to those frontier lands in respect of which there are reasonable grounds to believe that the significant discovery may extend." (CPRA subsections 28(1) and (2)) and, "...shall...make a written declaration of commercial discovery in relation to those frontier lands in respect of which there are reasonable grounds to believe that the commercial discovery may extend." (CPRA subsections 35(1) and (2))*

In considering a Significant or a Commercial Discovery, the NEB must follow the procedures set out in the *National Energy Board Act* (Section 28.2), which are summarized below:



- ▶ At least thirty days before making a decision (to make, revoke or amend a Significant or Commercial Discovery declaration), the NEB must give written notice of its intention to do so (subsection 28.2(2) NEBA).
- ▶ Notice is given to any person the NEB considers to be directly affected by the decision (subsection 28.2(2) NEBA).
- ▶ Anyone to whom notice is given may request a hearing within 30 days of receiving the notice (subsection 28.2(3) NEBA).
- ▶ If no request for a hearing is received, the NEB may make the decision (subsection 28.2(4) NEBA).
- ▶ If a hearing is requested, the NEB must fix a suitable time and place and notify each person who requested the hearing (subsection 28.2(5) NEBA).
- ▶ Each person who requests a hearing may make representations and introduce witnesses and documents at the hearing (subsection 28.2(6) NEBA).
- ▶ Following the hearing, the NEB makes a decision. Written reasons for the decision must be provided if the person who requested the hearing asks for reasons (subsection 28.2(7) NEBA).

The decision may be appealed to the Federal Court on matters of law or of jurisdiction, subject to leave to appeal being sought and granted.

#### **4. Details of the NEB Procedures for Significant and Commercial Discovery Declarations**

The following is an outline of the NEB's procedures for dealing with Significant and Commercial Discovery Declaration Applications (Applications):

1. Following the receipt of an Application, the NEB may delegate the matter to an investigative panel of the Board, consisting of one or more Board Members, which will examine the technical merits of the Application. The NEB will notify INAC or NRCan of the Application so that, if appropriate, INAC or NRCan can arrange for the existing licence to remain in force during the examination by the NEB of the Application.
2. The NEB will examine the Application. The technical review centres on determining the existence and the extent of the discovery. The determination involves examination of geophysical records and mapping, the regional and local geology, the petrophysical analysis of the discovery well, the reservoir continuity and quality, and a full analysis of



any relevant test data.

3. To facilitate the examination by the NEB, Information Requests may be issued to the Applicant, to supplement or provide clarification on the technical assumptions, analyses and data provided in the Application. Additionally, given the highly technical nature of the evidence provided in the Application, the investigative panel may choose to call, or an applicant may request, a Technical Conference to discuss technical issues that otherwise may not be easily handled through written Information Requests.
4. Material submitted to the NEB in relation to the Application is subject to section 101 of the CPRA relating to privileged information or documentation, and the exemptions provided in that section.
5. Based on the information on affected persons in the Application, the NEB will decide on a case-by-case basis as to who, if anyone, beyond the Applicant is directly affected by the decision. The Applicant and other directly affected persons will be notified of the NEB's decision on who else in the NEB's view is directly affected. This may include rights owners and any person who could be affected by the issuance of a Declaration, but is generally expected to be persons with a direct or related stake in the issuance of a Declaration.
6. The investigative panel will issue a Report, along with the notice of the NEB's intention to make a decision (the "Notice") which is provided to the Applicant and any other directly affected person.
7. The Notice will provide a description of the intended decision, based upon the attached Board report. An applicant may comment on or object to this decision, or request a hearing to examine existing or additional evidence.
8. If there are no requests for a hearing, the decision will be made by the NEB.
9. If a written request for a hearing is received by the Board Secretary, the NEB will set the matter down for a hearing.
10. Only the Applicant and directly affected persons may request a hearing. In order to have standing to participate in a hearing, a person, including the Applicant, must request a hearing within 30 days after the notice is given in subsection 28.2(3) of the NEBA.
11. The investigative panel will be discharged and a new panel, consisting of one or more Members, will be struck to consider the Application. The hearing panel would consist of Members who did not participate in the investigative panel.



12. The NEB may issue a Hearing Order to the Applicant and other directly affected persons in order to establish procedures and deadlines for the hearing.
13. All persons who requested a hearing may file new evidence. The previous submissions made to the NEB, including the original Application and Information Request responses, form part of the record and need not be resubmitted.
14. At or after the conclusion of the hearing, the NEB renders a decision.
15. If requested by a person who asked for the hearing, the NEB will provide written reasons for the decision.
16. The NEB will notify INAC or NRCan of its decision in order that INAC or NRCan may take relevant steps such as issuing successor rights or amending existing rights.
17. The NEB will issue the description of the lands subject to the Significant or Commercial Discovery declaration in the first issue of the NEB publication, Regulatory Agenda.

## **5. Contents of an Application for Significant Discovery Declaration**

The Applicant must provide proof that the Applicant is a registered holder of a valid interest by, for example, attaching a certified copy of the exploration licence agreement.

The submission of the Applicant should provide all the data and interpretations in support of the claim that the proposed significant discovery is...

*"...indicated by the first well on a geological feature that demonstrates by flow testing the existence of hydrocarbons in that feature and, having regard to geological and engineering factors, suggests the existence of an accumulation of hydrocarbons that has potential for sustained production." ( CPRA, section 2)*

The Applicant should also provide all the data from the first well and any other relevant wells, and interpretations that will assist the NEB in determining the extent of the significant discovery.

Without limiting the generality of the above, the Application should include the following which are suggested as meeting the minimum requirements:

- 1) The Application must be submitted in triplicate, with the exception of seismic data for which only one set of uninterpreted and interpreted data is required. The following items assume that the final well history report for the proposed discovery has been submitted; if not, all well information should be submitted.



- 2) An introduction identifying the well in question, name of operator and Applicant, its location, the exploration licence on which the well was drilled, the expiry date of the exploration licence, the interest holders, and a map showing the exploration licence and surrounding interests.
- 3) A plan and description of the lands requested as constituting the significant discovery area (using the land divisions and nomenclature described in the *Canada Oil and Gas Land Regulations*).
- 4) Summary of petrophysical and lithological description of all zones which have been flow tested.
- 5) Summary of flow test information.
- 6) Summary of formation pressure data, and any plots or diagrams used for estimating fluid contacts away from the borehole.
- 7) Time structure, depth structure and interval velocity maps and rationale for adjusting mapped surface to the tested zone.
- 8) An uninterpreted and an interpreted suite of seismic sections, using the same processing and display parameters.
- 9) Any analysis which will help determine the possible effectiveness or otherwise of faults or other potential barriers to flow which may cross the geological feature, and which may have a bearing on the areal extent of the accumulation.
- 10) Any geological or other argument which may provide additional grounds for assessing the extent of the accumulation.
- 11) Identification of the related interests, and interest holders and comments on who, other than the Applicant, would be directly affected by the decision.
- 12) Any other supporting data or interpretations.

## **6. Contents of an Application for Commercial Discovery Declaration**

The Applicant should provide proof that the applicant is a registered holder of a valid interest by, for example, attaching a certified copy of the significant discovery licence or exploration licence.

The submission of the Applicant should provide all the data and interpretations in support of the claim that the proposed commercial discovery...



*"...has been demonstrated to contain petroleum reserves that justify the investment of capital and effort to bring the discovery to production" (CPRA, Section 2)*

While the Applicant is responsible for ensuring that all materials are before the NEB to support a decision on the Application, much of this material may already have been submitted under other reporting requirements of legislation (NEBA, CPRA, COGOA), or as part of an application for a Significant Discovery Declaration. In order to avoid excessive duplication, this material may be presented in summary form provided that it is suitably referenced.

If a development plan has not been submitted to the NEB or is in the process of being submitted, the Application for commercial discovery should include a summary of the general approach to development envisaged for the pool or field. This should include:

- 1) the scope, purpose, and nature of any anticipated development.
- 2) the production rate, estimated amounts of oil and gas proposed to be recovered, reserves and recovery methods.
- 3) an indication of the planned production system or any alternative production system which could be applied to the reserves covered by the commercial discovery.

In addition to the minimum requirements outlined above for Significant Discovery declarations, the Applicant is required to demonstrate the extent of petroleum reserves. Well-specific details on such parameters as net pay and flow history as demonstrated by any extended production tests which may have been performed should be included. The NEB may request other related information as it considers necessary.

## **7. Filing of Applications**

Applications for Significant or Commercial Discovery Declarations must be sent to the Secretary of the NEB at the following address:

Secretary,  
National Energy Board,  
311 Sixth Avenue S.W.  
Calgary, Alberta  
T2P 3H2









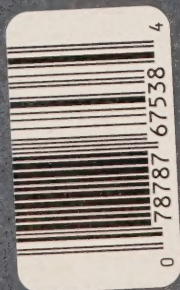












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